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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D. C.

DEPT. OF TRANSPORT.
DOCKET

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In the matter of

AMERICAN SOCIETY OF TRAVEL AGENTS,
INC. and JOSEPH GALLOWAY,

Complainants

v.

UNITED AIR LINES, INC., et al.,

Respondents

OST-99-6410 -5

ANSWER OF AMERICAN AIRLINES, INC.

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December 10, 1999

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ANSWER OF AMERICAN AIRLINES, INC.

American Airlines, Inc., pursuant to 14 CFR 302.204(b), hereby answers the third-party complaint submitted by the American Society of Travel Agents, Inc. and Joseph Galloway on October 25, 1999.¹

I. INTRODUCTION

The complaint should be dismissed. Although the complainants have attempted to characterize recent changes by carriers in their travel agent base commission policy as "unfair competition/' ASTA's members and Mr. Galloway are

¹On November 2, 1999, the Assistant General Counsel for Enforcement and Proceedings granted a 30-day extension for answers.

agents, not competitors, of American and each of the other named airline respondents. The complainants simply raise no competitive issues that would warrant action under 49 USC 41712.

Although the complaint is 24 pages long, a single remedy is sought; the complainants ask the Department to dictate that carriers pay travel agents an 8% commission. But the amount of commission paid by American to its travel agents is not an issue within the Department's purview. Competition with other airlines has driven American's decisions regarding its travel agent commission structure, and it is precisely such competition between airlines that Congress decided should determine prices and the structure of the industry. See 49 USC 40101(a)(12). The complainants' requested relief is contrary to the Department's authority and mandate under the Airline Deregulation Act.

II. THE TRAVEL AGENT-AIRLINE RELATIONSHIP

American sells airline tickets to the traveling public directly through its own ticketing and reservations system, and indirectly through authorized travel agents, such as ASTA members. The travel agents sell tickets on behalf of American from American's inventory, and American bears all risk of unsold seats. The agents, not being resellers, bear no such inventory risk.

In order to sell tickets on American flights, a travel agent must be accredited with the Airlines Reporting Corporation. Once accredited, an agent may apply to American for authorization to sell American's tickets, and must accept the terms and conditions of the standard ARC travel agency agreement, as well as American's addendum to that agreement. The standard ARC agreement, Section 1, Paragraph B, provides that "[t]his agreement establishes a principal-agency relationship between the airline and the travel agency." Further, the American addendum states that "[y]our travel agency...has entered into the Airlines Reporting Corporation Agent Reporting Agreement...whereby Agent has been appointed...to act as an agent for American...in the sale of air transportation" (emphasis added).

Under American's addendum, American and its travel agents agree that the agents will be compensated in accordance with American's published commission schedule. The addendum states that "American, in its sole discretion, reserves the right to modify its commission schedule from time to time and at any time." See Paragraph 2(a). The complainants make no allegation or suggestion that American's decision to modify its commission schedule is in violation of American's agreements with any of ASTA's members.

III. THE COMPLAINANTS FAIL TO ALLEGE ANY INJURY
TO COMPETITION

Under their agreements with American, travel agents act as American's agents. Both the Department and the courts have recognized and confirmed that this is a true principal/agent relationship. See Investigation Into Competitive Marketing of Air Transportation - Agreements Phase, Order 82-12-85, December 16, 1982, p. 59 ("[i]n writing the ticket, the travel agent acts as that particular carrier's agent on the transaction") ; Illinois Corporate Travel v. American Airlines, 889 F.2d 751, 753 (7th Cir. 1989) ("[t]ravel service operators are 'agents' for the purposes of antitrust law when they sell tickets for air carriers' accounts"). One of the fundamental duties of an agent is a duty not to compete with its principal concerning the subject matter of the agency. See Restatement of the Law, Agency, 2d, § 393. Accordingly, travel agents have a legal duty not to compete with American in the sale of air transportation to the public.

Yet the theme of the complaint is that the respondent airlines, by using their "genuine market power over travel agencies," have "embarked on a campaign to eliminate or at the least severely impair the public's access to travel agents," so that consumers will somehow be forced to purchase tickets directly from airlines (p.10). The reduction in commissions paid to travel agents is the primary factual basis alleged in

support of the unfair competition claim, but the complainants also list a number of purported measures taken by the airlines "that are intended to and have the effect of raising travel agent costs and impairing travel agency efficiency" (pp. 11-12). The complaint thus alleges that the airlines are "unfairly competing" with travel agencies by reducing their revenue (through commission reductions) and raising their costs (through a long list of purported "cost squeezing" practices) (pp. 11-19).

Accordingly, the entire premise of the complaint is without merit. As a matter of law, there is no "true competition between the airline and its agent," Illinois Corporate Travel v. American Airlines, 700 F.Supp. 1485, 1492 (N.D. Ill. 1988), aff'd, 889 F.2d 751 (7th Cir. 1989). The illusory "competition" between carriers and travel agents alleged by the complainants does not raise the sort of competitive concerns that are the focus of 49 USC 41712, as the Department has previously found. See Pacific Travel International v. American Airlines, Order 95-1-2, January 4, 1995.

In Pacific Travel, the Department dismissed a travel agent's complaint that it had been terminated by American for failing to follow American's rule requiring agents to collect payment within 24 hours from customers booking travel on a discount fare. The agent claimed that American's enforcement

of the rule was an "unfair practice" under Section 41712 because American allegedly waived the rule when customers booked tickets directly with American. The Department, however, correctly found that there was nothing to indicate that American's waiver of restrictions for tickets booked directly through American's reservations center, but not for tickets booked through a travel agent, could adversely affect competition in the airline industry in any substantial way (pp. 4-5).

The same principle applies here. Even if American were to decide to remove travel agents from its chain of distribution altogether (which it has not done), it would clearly be within American's right to do so. Competition with other airlines drives American's decision on how to distribute and sell its tickets, and such competition has driven American's latest decision on commissions to travel agents. The complainants seek to misapply Section 41712 in order to adversely affect and limit true competition in the industry.

IV. THE REQUESTED RELIEF IS BEYOND THE AUTHORITY OF
THE DEPARTMENT TO GRANT

The complainants are asking the Department to order the respondent airlines to pay an 8% commission to travel agents. Such relief is beyond the power of the Department to grant. Under the Airline Deregulation Act, the Department has no jurisdiction to dictate the commission rate that airlines

pay to their agents. American's independent decision on travel agent commissions was a result of its need to remain competitive with other major airlines. The forces of competition have compelled changes in the commission schedule, and that is clearly what Congress intended when it deregulated the industry.

V. SPECIFIC ALLEGATIONS

Pursuant to 14 CFR 302.207(b), American answers the complaint's specific allegations as follows.

1. American lacks sufficient knowledge either to admit or deny the allegations of the "Complainants" section of the complaint (pp. 3-4).

2. American admits that it is a certificated United States "air carrier" as alleged in the "Respondents" section of the complaint (p. 4).

3. The "Statutory Framework" section of the complaint (pp. 4-7) characterizes statutes and historical events and related case law, and does not require specific admission of denial. However, American denies that 49 USC 41712 is relevant to the facts alleged elsewhere in the complaint.

4. The "Economic Background" section of the complaint (pp. 8-10) is a general statement of the complainants' subjective views of the nature of the travel agent business. It contains no affirmative allegations, and therefore requires

no admission or denial. However, American specifically denies that travel agents compete with the airlines for which they act as agents, and that airlines have "genuine market power over travel agencies."

5. For the most part, the "Non-compensatory Commission Policies" section of the complaint (pp. 10-11) contains argumentative and subjective views of the complainants that do not require any admission or denial. However, American specifically denies that it "has embarked on a campaign" to limit or impair the public's access to travel agents and that it competes with its travel agents. American admits that it has reduced base commissions it pays to travel agents from time to time in response to competitive conditions in the industry.

6. American denies the underlying allegation of the entire "Cost Squeeze" section of the complaint (pp. 11-19), namely that it has taken a series of actions intended to raise travel agency costs and impair travel agency efficiency in order to limit consumer access to travel agencies and their access to consumers.

7. The "Discussion" and "Conclusions" sections of the complaint (pp. 19-24) are general argument containing no affirmative allegations and thus requiring no admission or denial. However, American specifically denies that it competes with its travel agents.

8. In response to the complainants' prayer for relief (p. 24), American requests that the Department dismiss the complaint.

VI. AFFIRMATIVE DEFENSES

1. The complaint fails to allege a cause of action upon which relief can be granted.

2. The relief sought is barred by the Airline Deregulation Act in that the complainants have requested the Department to restrict competition between airlines and influence prices for air transportation through regulation of commissions rather than reliance on actual and potential competition between and among airlines.

3. The relief sought is barred by the doctrines of estoppel and waiver.

4. The complainants lack standing to bring this action.

CONCLUSION

For the foregoing reasons, the Department should dismiss the complaint.

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Respectfully submitted,

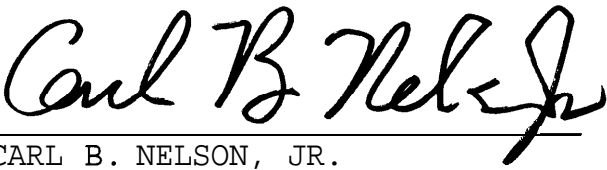
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December 10, 1999

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by first-class mail on all persons named on the attached service list.


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December 10, 1999

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